



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82822; File No. SR-NASDAQ-2018-017]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Rule 7014 to Eliminate the Small Cap Incentive Program and the Limit Up Limit Down Pricing Program**

March 7, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange's transaction fees at Rule 7014 to eliminate the Small Cap Incentive Program and the Limit Up Limit Down Pricing Program, as described below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 1, 2018.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 7014 of the Exchange's Rules to eliminate the Small Cap Incentive Program ("SCIP") and the Limit Up Limit Down ("LULD") Pricing Program.

SCIP Program

The SCIP is a rebate program that presently applies to Exchange market makers ("Nasdaq Market Makers") registered in Nasdaq-listed companies with a market capitalization ("cap") of less than \$100 million. Under the program, Nasdaq Market Makers registered in a designated SCIP symbol receive an additional displayed liquidity rebate of \$0.0005 per share executed for executions at or above \$1.00 ("SCIP Rebate") if their percent of time at the NBBO is above 50% for the month ("NBBO Test"). The SCIP Rebate is in addition to all other applicable displayed rebates. For shares executed below \$1.00, Nasdaq Market Makers are

subject to the following rates: (i) The rebate to add liquidity is 0.10% of the total dollar volume; and (ii) the fee to remove liquidity is 0.25% of the total dollar volume.

The Exchange established the SCIP to encourage Nasdaq Market Makers to improve market quality for Nasdaq-listed companies with market caps of under \$100 million. Although the program has had some limited success, it has not been effective to the extent intended when introduced. Accordingly, the Exchange no longer believes that the operation of the SCIP is an appropriate allocation of its limited resources and it proposes to eliminate the program.

#### LULD Pricing Program

The LULD program is a rebate program designed to provide incentives to market participants to provide liquidity during periods of extraordinary volatility in a select group of NMS Stocks chosen by the Exchange (“LULD Liquidity Symbols”).

Specifically, for LULD Liquidity Symbol securities priced \$1 or more, the Exchange offers an incentive in the form of a \$0.0010 per share executed rebate to Nasdaq Market Makers that enter displayed orders to buy (other than Designated Retail Orders, as defined in Rule 7018) when the LULD Liquidity Symbol security enters a Limit State based on an NBO that equals the lower price band and does not cross the NBB (“Limit Down Limit State”). To be eligible, the Nasdaq Market Maker must be registered as a market maker for the LULD Liquidity Symbol.

Similarly, for LULD Liquidity Symbol securities priced \$1 or more, the Exchange provides a \$0.0010 per share executed rebate to Nasdaq Market Makers that enter displayed orders to buy (other than Designated Retail Orders, as defined in Rule 7018) when the LULD Liquidity Symbol security enters a Straddle State based on an NBB that is below the lower price band (“Limit Down Straddle State”).

Finally, the Exchange provides an incentive to all market participants that enter Orders in an LULD Liquidity Symbol during a Trading Pause and receive an execution of that Order. The Exchange provides a \$0.0005 per share executed rebate, which is provided upon execution of the eligible Order in the reopening process at the conclusion of the Trading Pause.

The Exchange intended for the LULD Pricing Program to improve market quality by promoting liquidity and price discovery for LULD Liquidity Symbols that have triggered Limit Up/Limit Down processes. Subsequent to the introduction of the LULD Pricing Program, certain enhancements to the LULD Plan have been implemented which reduced LULD pauses and supported a more orderly resumption of securities subject to LULD pauses. Therefore, the LULD Pricing Program is no longer needed and the Exchange proposes to eliminate it.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposals to eliminate the SCIP and the LULD Pricing Program are reasonable because neither Pricing Program has been effective to the extent intended. In addition, improvements to the implementation of the LULD Plan have made the LULD Pricing Program unnecessary. Furthermore, the Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is equitable to allocate those resources to those programs that are effective and away from those programs that are

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4) and (5).

ineffective. The proposals are equitable and not unfairly discriminatory because the elimination of the SCIP and the LULD Pricing Program will apply uniformly to all similarly situated members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed elimination of the SCIP and the LULD Pricing Program will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Further, the Exchange does not believe that elimination of the programs will impose a

burden on competition among market participants because the impact of the proposal will apply equally to all members that presently qualify for the programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>5</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2018-017 on the subject line.

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-017, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>6</sup> 17 CFR 200.30-3(a)(12).



